Proposed Regulations

For

Alberta's New Child Welfare Act

December 27, 1984

Alberta

SOCIAL SERVICES
AND COMMUNITY HEALTH

STRATEGIES FOR THE DEVELOPMENT OF REGULATIONS PRIOR TO PROCLAMATION OF THE NEW CHILD WELFARE ACT

In the development of the new Child Welfare Act it was envisioned that certain matters may require regulations which would clarify the legislation, commit funding and services, or prescribe procedures, roles, or standards. The development of regulations is discretionary under section 96 of the Act, therefore, it appears that there was no intent to provide regulations for all matters prior to proclamation of the legislation.

It is recommended that regulations be developed in several areas where they are essential for proper implementation of the legislation. The approach in favor of developing minimum regulations prior to July, 1985, is based on the following strategies:

1. The government is committed to minimum regulations. Regulations which impose unnecessary demands on people are to be avoided.
2. Due to the substantial changes demanded of employees at the time of the implementing of the new legislation, it is desirable to minimize the adjustments required. Expecting too many changes all at one time may hinder the overall improvement of child welfare services.
3. At a time of introducing major changes in child protection programs there is merit in allowing time for experimentation and experience to determine what matters may require regulations and the nature of the regulations.
4. The development of regulations based on anticipations of future issues may result in regulations that are inappropriate or unnecessary.
5. Many matters that may be regulated are substantial issues that are complex in nature and controversial. Regulations for these matters will take time to be developed properly.
6. Further regulations may be developed as experience is gained with the new legislation.

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A PROPOSAL ON OPTIONS FOR REGULATIONS PRESCRIBING THE QUALIFICATIONS OF PERSONS TO BE EMPLOYED IN PROVIDING PROTECTIVE SERVICES

This paper has been drafted on the assumption that the new Child Welfare Act is not amended to relieve the requirement for regulations prescribing the qualifications of child welfare workers.

Draft #2
December 12, 1984
Child Welfare Implementation Project
Alberta Social Services and Community Health

1. PURPOSE

The purpose of this paper is to examine options in the development of regulations prescribing the qualifications of persons to be employed in providing protective services.

2. BACKGROUND

There are many ways of addressing the quality of child protective services that are provided through child welfare legislation. One of the approaches may be to address the qualification of persons delivering those services.

PRESENT SITUATION

The present Child Welfare Act enables the Director of Child Welfare to appoint any employee in the Department as a child welfare worker for the purposes of the Act.

Following the Ombudsman's Report on Foster Care in 1981, the Department undertook a commitment to ensure a significant supply of professionally trained social workers. The objective was to have most child welfare workers and supervisors professionally trained by April 1, 1984. At the time this objective was set, only 34% of those employees were professionally qualified.

Since 1981, progress has been made in providing professional staff through initiatives which resulted in existing staff being trained and the recruitment of qualified personnel to fill vacancies.

As of March 31, 1984, 59.8% of the staff had professional qualifications by virtue of having a Social Work degree (B.S.W., M.S.W.) or were Registered Social Workers (R.S.W.). The staff with these qualifications included staff specializing in child welfare services as well as those responsible for a diversified caseload.

By November 29, 1984, the percentage of qualified staff had increased to 73.3%.

PROVISIONS UNDER THE NEW LEGISLATION

The new Child Welfare Act enables a director to appoint an individual with the qualifications prescribed by the regulations as a child welfare worker for the purposes of the Act. (Section 94(3).)

This provision contemplates the desirability of regulations to set standards for the qualifications of persons to provide protective services. These regulations are permitted under section 96(1) of the Act and would be made by the Lieutenant Governor in Council. This provision, in contrast to the present legislation, contemplates that persons other than employees of the Department may be appointed as child welfare workers.

CONSIDERATIONS IN PROPOSING REGULATIONS

In considering options for the development of regulations prescribing the qualifications of persons to be employed providing child protective service, the following considerations may be made:

(i) the regulations would apply to employees of the Department and non-employees. The initiatives being undertaken to promote Native's providing their own child welfare workers would have to meet the qualifications in that Native child welfare workers would have to meet the qualifications in order to be appointed by a director.

(ii) since the Department is presently engaged in initiatives to increase the number of qualified staff and wishes to maintain this thrust, it appears desirable to establish regulations that support these efforts.

(iii) the standards established in the regulations must be ones that can reasonably be obtained. While the objective set in 1981, of having most front-line staff professionally trained by 1984, has resulted in major gains, over 25% of these staff presently lack these qualifications. Regulations that restricted the director to appointing only professionally trained staff could offset approximately 25% of the present staff.

(iv) the new legislation enables a director or a Children's Guardian to delegate any of his powers or duties to a person employed or engaged in the administration of this Act or to any other person who is providing care to a child. (Section 87(3).) These persons may not be child welfare workers. There are, however, specific provisions in the Act that impose a duty upon a child welfare worker (e.g. Section 17 states that only a child welfare worker or a peace officer may apprehend a child....). Therefore, where the Act has specifically required that a child welfare worker carry out a function, it must be carried out by a child welfare worker who has the qualifications prescribed in any regulations that may exist.

(v) as it is envisioned that directors may be appointing child welfare workers who are not employed by the Department, it may be desirable to recognize that some non-government agencies should not be expected to meet the same standards as set within the Department. Regulations that enabled different standards to exist may be criticized for allowing a double standard and arguments supporting one provincial standard could be made.

OPTIONS

1. <u>No regulations to be developed prior to implementation of the legislation</u>.

This option assumes that regulations are not required for proper implementation of the legislation.

Under this option, the directors would continue to appoint child welfare workers in a manner very similar to the present, except non-employees of the Department could also be appointed.

The desirability of increasing the number of professional staff could continue as a Departmental policy.

Advantages

(i) Enables maximum flexibility for the directors in appointing child welfare workers.

(ii) Enables the director to re-appoint the existing staff at the time of proclamation thereby avoiding any staff changes that may be required if existing staff did not meet the standard established in regulations.

(iii) Avoids any increases in costs that might result if regulations required child welfare workers to have higher qualifications than at present.

Disadvantages

(i) May be seen as maintaining the present situation when there is a public expectation to increase the qualifications of staff.

(ii) May be contrary to the intent of the legislation in that directors should be required to adhere to the standards established in regulations when appointing child welfare workers.

2. Develop regulations which require that child welfare workers be professionally qualified prior to appointment by a director.

This option assumes that the nature of the duties of a child welfare worker dictates that the director be restricted to appointing persons who have been recognized as professionals.

Under the option, the regulation prescribing the qualifications of persons to be employed in providing protective services could include:

a) persons who have obtained a Bachelor's or Master's Degree in social work;

b) persons who have been registered as social workers in the Province of Alberta;

Advantages

(i) Provides families and children with service providers who have the highest professional qualifications.

(ii) May enhance the public credibility of the Department by virtue of improving the qualifications of staff.

Disadvantages

(i) The Department would have difficulty in meeting this standard by July 1, 1985.

(ii) May create a situation where small district offices could experience times when staff with these qualifications are not available.

(iii) Might increase costs for salaries required to recruit and retain persons with these qualifications.

(iv) Might set a standard which non-government service providers (i.e. Indian Bands) would have difficulty meeting.

(v) Would impact approximately 25% of the present child welfare staff who would not meet the standard.

2.A Develop regulations which require child welfare workers be professionally qualified as in Option 2, but provide for retaining present child welfare workers who are not professionally qualified.

This option is identical to Option 2 above, however, it would be developed to include a provision that present staff would be exempted from this standard if they lacked the professional qualifications. Under this option, child welfare workers appointed prior to the proclamation of the Act could be retained in their positions, however, persons appointed subsequent to proclamation would be required to be professionally trained.

Advantages

i) Maintains the Department's commitment to upgrade the qualifications of staff.

ii) By retaining present staff, disruptions are kept to a minimum at proclamation.

iii) Allows for gradual change in that staff lacking professional qualifications would be replaced by professional staff at the time of termination of employment.

Disadvantages

i) May be difficult to attain the standard of recruiting professional staff for all vacant positions after proclamation.

ii) Sets a standard for non-government service providers (e.g. Indian Bands) that may be difficult to meet.

iii) May be seen by the public as maintaining the present situation by enabling non-professional personnel to continue to practice child welfare work.

3. Develop regulations that prescribe the qualifications of child welfare workers in such a manner as to reflect the present situation but retains the commitment for increasing the number of qualified persons.

This option assumes that present standards are satisfactory for the immediate future. The regulations would prescribe the professional qualifications as suggested under option 2 above, but would allow for non-professional workers to be appointed under certain conditions.

Under this option, the regulation might prescribe a qualified child welfare worker to be:

a) a person who has obtained a Bachelor's or Master's degree in social work;
b) a registered social worker in the Province of Alberta;
c) a person who has successfully completed a course of studies specific to child protection services that has been approved by the Department;
d) a person who had been employed as a child welfare worker prior to proclamation.

Advantages

(i) Retains the child welfare workers appointed under the present legislation at the time of proclamation thereby minimizing case disruptions.

(ii) Enables non-professional staff to be appointed subject to pre-training which may be an advantage when non-government agencies commence providing child welfare services (e.g. Indian Bands).

(iii) Could be interpreted to mean that directors should appoint professionally trained personnel whenever possible.

Disadvantages

(i) May be seen as accepting the present situation rather than improving on the number of professional personnel performing child welfare worker functions.

(ii) May result in a double standard in that some communities may be served by someone lacking professional training while other communities are served by professionals.

(iii) May increase the expectations on the child welfare workers immediate supervisor (eg. need for different levels of supervision).

RECOMMENDATION

Option 3 is the preferred option.

RATIONALE

The development of professionally trained staff within the child welfare system is an evolutional process and one that cannot be accomplished suddenly. This option recognizes this situation. It affords flexibility while promoting a desirable standard for professional child welfare workers. This option also minimizes the potential disruption to families and children by enabling existing workers to retain the responsibility for their cases.

A PROPOSAL ON OPTIONS FOR PRESCRIBING THE PROFESSIONS OR OCCUPATIONS THE DIRECTOR WOULD ADVISE WHEN A MEMBER HAS FAILED TO REPORT A CHILD IN NEED OF PROTECTIVE SERVICES

Draft 2

December 18, 1984

Child Welfare Implementation Project
Alberta Social Services and Community Health

PURPOSE:

The purpose of this paper is to examine the issues involved in developing a Regulation for the new Child Welfare Act which would prescribe the professions or occupations under section 3(5) of the Act apply. This section states that a Director is required to advise the appropriate governing body of a profession or occupation as prescribed in the Regulations when a registered member fails to report a child in need of protection. These Regulations would be made by the Lieutenant Governor In Council under Section 96(1)(c). Options will be identified as to how this matter may be approached prior to proclamation of the new legislation.

BACKGROUND:

PRESENT SITUATION

The present Child Welfare Act (section 35) requires that any person who has reasonable and probable grounds to believe and believes that a child has been abandoned, deserted, physically ill-treated or is in need of protection must forthwith report the grounds for his belief to the Department. The requirement to report this information to the Department's child welfare authorities applies to persons who may of attained the information in a confidential or privileged manner. A section providing for a penalty for failure to report children in need of protection exists in the present Act but has never been proclaimed.

REQUIREMENTS UNDER THE NEW LEGISLATION:

Section 3 of the new legislation, to be proclaimed July, 1985, requires that any person who has reasonable and probable grounds to believe and believes that a child is in need of protective services shall forthwith report the matter to a director. As in the present Act, notwithstanding that the information is confidential and its disclosure is prohibited under any other Act, the report must be made to a director. The only exemption from this requirement is that of a solicitor-client relationship. Persons making these

reports are protected from civil liability by the Child Welfare Act unless the report was done maliciously or there were no reasonable and probable grounds for the belief that the child was in need of protection.

There is a penalty for failure to report information to a director. If a person is found guilty, a fine of not more than $2,000 may be ordered by the Court and, in default of payment, imprisonment for a term of not more than six months may be imposed.

The provisions within Section 3(5) are intended to ensure that members of some professions or occupations comply with the requirement to report circumstances where children may require protection. Under this section, a director having reasonable and probable grounds to believe that someone has not complied with the reporting requirements must advise the appropriate governing body of a profession or occupation of the failure to comply. The director's actions are restricted to those situations where the person is registered under an Act regulating a profession or occupation and to the Regulations under the Child Welfare Act that prescribe the professions and occupations.

ISSUES:

The task of identifying children that may be in need of protective services requires that the public be aware of the importance of responding to any information that indicates a child is at risk. It is for this purpose that child protection agencies have conducted public awareness campaigns encouraging persons to report their information to the proper authorities. In Alberta, a 24-hour child abuse hotline exists for this purpose.

In the preparation of the new Child Welfare Act, it was recognized that some individuals, by virtue of their profession and occupation, are more likely to become aware of children in need of protection. Regulations prescribing these professions and occupations would be intended to encourage members to report information to a Director. Failure to do so could result in their governing body disciplining them in some fashion.

Some of the issues that may be considered when proposing Regulations on this matter are:

1. Section 3(5) of the Child Welfare Act would be meaningless without Regulations.

2. The legislation compels a director to report persons who failed to provide information, although the director would be required to have reasonable and probable grounds to believe that the person did not comply with the requirement to report.

3. The governing body of the professions or occupations prescribed in the Regulations would determine what action, if any, would be taken upon receipt of a Director's report.

4. Because of the significance of this action, it is anticipated that the responsibility for advising the appropriate governing bodies would be retained by the director appointed under the Act in each of the six regions providing child welfare services in the province.

OPTIONS:

1. Do not develop Regulations prior to July, 1985.

   This option assumes that it is not essential to develop Regulations prior to proclamation of the legislation. In the absence of Regulations, the Department could develop a policy whereby directors would be directed to report governing bodies those incidents of failure to report.

   Advantages

   (i) Allows for experience following implementation of the legislation to determine if Regulations are necessary.

   (ii) Avoids any controversy that might occur in subjecting some professions or occupations to a Regulation while exempting others.

Disadvantages

(i) May be seen as failing to adopt a strong position on a matter that is seen as having a potential to ensure children are protected.

(ii) In the absence of Regulations, directors may not choose to report persons to the governing body of their profession or occupations unless a Departmental policy was developed and enforced.

(iii) The absence of Regulations may leave the public uncertain as to the expectations of the Department.

2. Develop Regulations that prescribe those professions or occupations outside of child welfare work that are known to most frequently obtain information about children in need of protection.

This option would result in Regulations being developed prior to July, 1985. Those professions or occupations affected by the Regulations would be consulted prior to their development. The intent of this option is to limit the Regulation to persons not employed as child welfare workers under the Child Welfare Act.

Under this option the Regulations might include the following groups which are regulated under an Act in the Province of Alberta.

(i) Psychologists Association of Alberta

(ii) College of Physicians and Surgeons of Alberta

(iii) Alberta Teachers Association

(iv) Provincial Police Association

(v) Alberta Registered Nurses Association

(vi) Law Society of Alberta

(vii) Alberta Association of Social Workers

(viii) Alberta Association of Child Care Workers

Advantages

(i) Provides clear direction and expectations.

(ii) Would encourage members of these professions and occupations to report information on children that may be in need of protection.

(iii) May encourage the governing bodies of the prescribed professions and organizations to take a greater interest in child protection issues.

Disadvantages

(i) May result in apprehension in sharing information with members of these professions and occupations in anticipation that the information would be shared with provincial child welfare authorities.

(ii) May result in "over reporting" by persons affected by the Regulations in reaction to the possibility of their governing body taking action against them for failure to report.

(iii) May be perceived as discriminatory in that some professions and occupations would not be regulated.

(iv) Some persons in regulated professions and occupations would be exempted if they were not registered with the governing body.

3. Prescribe in Regulations those professions and occupations as proposed in Option 2 and include child welfare workers appointed under the Child Welfare Act.

This option could include the same professional and occupational groups as identified under option 2.

Advantages

(i) Same advantages as under option 2.

(ii) Allows the professional governing body (e.g. Alberta Association of Social Workers) to address all its members rather than exempting child welfare workers.

(iii) Results in professional child welfare workers who are members of a professional body to being accountable to the Director as an employee and to their governing body as a member of that profession.

Disadvantages

(i) Same as those under option 2.

(ii) May not be necessary as child welfare workers are accountable to the Director for their performance as individuals employed in the work of providing child protective services.

RECOMMENDATION:

Option 1 is the preferred option. This option would result in no Regulations being developed prior to July, 1985.

Rationale:

The development of any Regulation on this matter will be most controversial with these groups proposed to be affected. The determination of those groups to be regulated will be most difficult. A more positive approach may be to encourage all professionals and occupations to participate in the treatment of child abuse and neglect in a manner short of imposing participation through the authority of a Regulation.

A PROPOSAL FOR REGULATIONS PRESCRIBING QUALIFIED PERSONS FOR THE PURPOSES OF PARTS 5 AND 6 OF THE CHILD WELFARE ACT

Draft #2

December 14, 1984

Child Welfare Implementation Project

Alberta Social Services and Community Health

PURPOSE

The Child Welfare Act, to be proclaimed in July, 1985, provides for qualified persons to complete reports in support of both private guardianship and adoption applications. Reports for applications on behalf of children who are subjects of permanent guardianship agreements or orders are to be completed by the director. In other circumstances, these reports for the courts are to be completed by a qualified person as prescribed in the regulations.

BACKGROUND

1. Guardianship Orders

Present Situation: The present Child Welfare Act does not have any provisions that enable persons, other than the Director of Child Welfare, to apply to the Courts for a guardianship order for a child. Applications for guardianship orders under the Domestic Relations Act require that the applicant provide evidence that the child has no parent, or lawful guardian, or the parent or lawful guardian is not a fit and proper person to have the guardianship. Generally, this evidence is provided to the Court in the form of affidavits. In those situations where parties are contesting the application, the Court may appoint an amicus curiae (friend of the court) to complete a report to assist the Court in reaching a decision. The individual appointed to complete these reports include professionally trained social workers and non-professional persons who have a great deal of experience in completing these kinds of reports.

Requirements under the New Legislation: Part 5 of the new legislation enables any adult who has held continuous care of a child for a period of more than 6 months may apply to the Court for a private guardianship order. Children who are the subjects of a temporary guardianship order cannot become the subjects of a private guardianship order.

As provisions for private guardianship orders within the Child Welfare Act have not existed previously, it is difficult to anticipate those circumstances which will prompt applications and the frequency of applications.

The Court, upon hearing an application, may require the applicant to provide it with a report prepared by a qualified person. This report must address:

(i) the suitability of the applicant as a guardian.

(ii) the ability and willingness of the applicant to assume the responsibility of a guardian towards the child.

(iii) whether it is in the best interest of the child that the applicant be appointed as a guardian of the child.

Reports must be completed by a director when the child is the subject of a permanent guardianship order or agreement. In all other circumstances, the applicant is required to serve a copy of the report on a director not less than 2 days before the report is provided to the Court. A director may conduct an investigation with respect to a guardianship application and make representations to the Court at the time the application is heard.

2. Adoption Orders

Present Situation: Old adoption applications under the present Child Welfare Act require that the Director of Child Welfare cause an investigation of the applications and prepare a report of the investigation. This report must be presented to the judge by the Director in all adoptions regardless of whether or note the child is in the care of the Department. During 1983, child welfare workers completed reports for 694 ward adoptions and 1056 non-ward adoptions.

The activities and expectations associated with completing these reports have been established within Department policy and procedures. These requirements are made known to staff though the Child Welfare Program Manual and are reinforced through inservice staff training experiences.

Any person appointed as a child welfare worker by the Director of Child Welfare may complete an adoption report. At present, approximately 73% of the child welfare workers have a social work degree or are Registered Social Workers. It is not known what percentage of the adoption reports are presently being completed by professionally qualified staff. The quality of the reports that have been completed by Departmental staff has been established and controlled by a number of factors over the years:

(i) individual judges have indicated their expectations by deferring the granting of an order pending additional information. These requests by the judges have been incorporated into program expectations on the minimum content for adoption homestudies.

(ii) standards for reports established by other jurisdictions.

(iii) a policy requirement that all reports be counter-signed by the worker's immediate supervisor. An additional level of control is that of requiring all adoption homestudies be reviewed by Central Office prior to submission to the Court.

(iv) policy and procedure requirements contained within the Child Welfare Program Manual which also includes a guideline for the content of homestudies.

Ward adoptions occur when the Director places a permanent ward with someone for the purposes of adoption. Non-ward adoptions occur when:

(i) A parent has remarried and the new spouse desires a legal parental relationship with the child.

(ii) A mother has married following the birth of a child out of wedlock and the spouse desires a legal parental relationship with the child.

(iii) A person, or a married couple, desire a legal parental relationship with the child.

The following statistics for 1983 indicate the frequency of these various circumstances:

(i)	A parent has remarried	504
(ii)	An unwed mother has married someone other than the putative father.	367
(iii)	A parent has placed the child privately.	134
(iv)	A 3rd party has placed the child privately	20
(v)	International adoptions	31
	TOTAL	1,056

Requirements under the New Legislation: Any adult may apply to adopt a child, according to the new legislation, by making an application to the Court accompanied by a report prepared by a qualified person. For the purposes of adoptions, the report is mandatory in all cases (the report is discretionary for guardianship applications) and is to be completed by the director when the child is the subject of a guardianship order or agreement. As in the case of guardianship applications, adoption applications for all other children will require that the director receive a copy of the report at the time of notice of the application. The director will have the capacity to conduct an investigation with respect to the proposed adoption and may make representation to the Court at the time the application is heard.

Issue

As indicated above, the new legislation does not require child welfare workers (representing the Director) to complete guardianship and adoption application reports unless the child is the subject of a permanent guardianship agreement or order. In practice, persons applying for a guardianship order will have their application heard in court at which time the Court may request that a report be completed. In adoption applications, a report will be required to accompany the application when made to the Courts.

The issues to be addressed is determining the qualifications of those persons who may complete these reports. In anticipation of the need to provide some control of this matter, the Act enables regulations to be made that prescribe qualified persons for the purposes of Parts 5 and 6 (Section 96(1)(f)). The significance of both guardianship and adoption orders, and the Court's reliance upon the reports to provide appropriate information, suggests that the interest of children may by protected by ensuring that the persons completing these reports are capable individuals.

Considerations

In considering potential regulations prescribing qualified person, the following factors may be taken into consideration.

1. The legislation requires that the report for guardianship and adoption orders be completed in a prescribed form. Should a regulation be

developed to prescribe this form, a standardized content format for this report may result in consistent information being offered to the Court. This requirement would assist in the quantity of information within a report but would not, in itself, address the quality of information. The absence of a regulation prescribing the form would result in a greater reliance on the person completing the report to provide sufficient and appropriate information.

2. Individuals providing reports to the courts under the Domestic Relations Act for the purposes of guardianship applications generally are professionally trained persons, but not always.
3. Reports completed by persons other than a director, are subject to review by a director and the director may conduct an investigation with respect to the proposed application and make representations to the Court. While this provision may enable a director to advise the Court of any concerns that may be known about any application, it is believed that the Act did not intend that the director would conduct an investigation in all cases as to the merit of the application or the qualifications of the persons completing the report.
4. Persons assigned to complete reports for children who are the subjects of permanent guardianship agreements or orders may be determined by Departmental policy. Directors could designate those staff to complete the reports. Policy could dictate that the reports be reviewed by a supervisor and approved prior to submission to a Court.
5. Any regulation developed prescribing the qualifications of persons would require that both the director and the public adhere to the regulation in selecting a person to complete these reports.
6. Application for guardianship orders will be heard in the Provincial Court while adoption applications will be heard in the Court of Queens Bench for at least one year following proclamation of the legislation.
7. In some cases, the reports may be completed in another jurisdiction since the Act enables orders to be granted when the applicant does not reside in Alberta.

Options

The following options have been identified in response to the issue of ensuring that these reports are completed by competent persons.

1. Do not develop any regulations prescribing the qualifications of these persons.

This option assumes that proper implementation of the legislation can occur without providing regulations. It provides maximum flexibility in determining who will complete these reports and would result in a wide variation in the quality of information provided to the Court. By necessity, there would be an expectation placed on both the director and the Court to ensure that the information provided to the Court was accurate and substantive. As applicants may select individuals highly supportive of their application these reports could be biased in favor of the applicant.

Advantages:

(a) Enables the applicants to select any person of their choice to complete the report.
(b) May reduce the cost to the applicants as professional individuals will charge a fee.
(c) May encourage persons to make applications if they could employ persons immediately available.

Disadvantages:

(a) May result in a poor quality of information being provided to the Courts.
(b) May result in delays in the granting of orders when the Courts are not provided with sufficient information.
(c) May prompt the director to investigate all applications where there is uncertainty about the quality of the report.

2. Develop regulations that prescribe the qualifications of these persons according to professional training.

This option assumes that these reports should be completed by persons who have successfully completed a course of studies and received recognition in the form of a registration or degree. The professional training would be restricted to those disciplines related to the humanities. This standard would be applicable to the director as well as persons in the community.

Under this option, the regulation might prescribe a qualified persons to include:

(a) a registered social worker in the Province of Alberta or its equivalent in another jurisdiction.

(b) a person who has obtained a Bachelor's or Masters degree in social work.

(c) a registered psychologist in the Province of Alberta or its equivalent in another jurisdiction.

Advantages:

(a) Restricts this activity to professionally trained persons.

(b) Enables professional bodies to discipline their members in some situations should the need arise.

(c) Sets a standard that is consistent for employees of the department and non-employees engaged in this activity.

Disadvantages:

(a) May cause financial hardships for some applicants due to the fees that would be charged by the professionals (estimated to be $350.00 minimum).

(b) May discourage applications where there are not qualified persons immediately available.

(c) May set a standard that some social service providers may be unable to attain. (e.g. Indian reserves providing their own child welfare services and district offices that may not have a qualified staff member available.)

3. Develop regulations that prescribe the qualifications of the persons to be determined by professional training as indicated under option 2 and include a provision enabling a director to authorize other persons to complete these reports.

This option makes the same assumptions as stated under option 2 above but provides greater flexibility by enabling a director to authorize someone lacking the professional training to complete a report for an application. The authorization would be specific to each application and not blanket authorization for this activity.

Under this option the regulation to be developed could include the following provision:

A qualified person would include:

(a) a person designated by a director.

(b) a registered social worker in the Province of Alberta or its equivalent in another jurisdiction.

(c) a person who has attained a Bachelor's or Masters degree in social work.

(d) A registered psychologist in the Province of Alberta or its equivalent in another jurisdiction.

Advantages:

(a) While intending that reports be completed by persons with professional training, this option allows for individual circumstances where a person having professional qualifications is not available (e.g. a clergyman in an isolated community).

(b) Could reduce the financial hardship for some applicants.

(c) May encourage applications where potential applicants do not have immediate access to professionals or are reluctant to retain a stranger due to cultural differences (e.g. language).

Disadvantages:

(a) May be criticized for enabling as exemption to a standard that supports professionals as the most desirable persons to complete these reports.

(b) May place a difficult expectation on directors who would be required to decide when to authorize persons.

(c) may be seen as inappropriate government intervention by allowing directors in some cases to determine which persons are acceptable to complete the reports.

4. Develop a regulation that provides maximum flexibility in determining who may become qualified persons for the purposes of Parts 5 and 6 of the Act.

This option assumes that it is desirable to set a standard on this matter. It assumes that the qualifications should be very broad within regulations. Departmental policies would provide the direction required by a director.

Under this option the regulation could state that a qualified person is a person acceptable to a director.

A director could authorize a person to engage in this activity over a specified time period or a director could limit the authorization to a single application.

Advantages:

(a) Provides maximum flexibility at proclamation of the legislation and recognizes that regulations could be changed should the need arise based on experience.

(b) Recognizes that professional resources may not be readily available to meet the demand.

(c) Could reduce the cost of applicants.

Disadvantages:

(a) Relies too much on the department to control who determines those persons to be qualified.

(b) Leaves the public with a perception that a standard has not been established.

(c) By vesting the authority for making this determination in a director, the government may be seen as intervening in the standards set for qualifying professionals as set by professional bodies such as the Alberta Association of Social Workers.

RECOMMENDATION

It is recommended that option 3 be developed.

RATIONALE

This option sets a standard that professional persons would become qualified. It does, however, enable some flexibility in recognition of those cultural and community differences that exist in the Province. There should be an approach that promotes children having an opportunity to have the security of guardians or adoptive parents. Regulations that deter this from happening would not be desirable. There is also a concern that the interest of these children, who are the subjects of these applications and dependent upon the Court for sound decisions, be competently represented before the Court when the reports are considered.

A PROPOSAL ON OPTIONS FOR REGULATIONS PERTAINING TO SECURE TREATMENT

Draft #2

December 14, 1984

Child Welfare Implementation Project

Alberta Social Services and Community Health

PURPOSE

Section 96 of the new Child Welfare Act enables the Minister to make regulations pertaining to matters regarding the secure treatment of children. Those matters that may be regulated are:

(i) 96(2)(f) - prescribing institutions as secure treatment institutions.

(ii) 96(2)(g) - prescribing the standards of diagnostic and treatment services to be provided in a secure treatment institution.

(iii) 96(2)(h) - prescribing the level of security required for the confinement of a child in a secure treatment institution.

The purpose of this paper is to recommend those regulations that are deemed essential for proper implementation of the new Child Welfare Act in July, 1985 and to provide options on what the regulations may prescribe.

MATTERS FOR WHICH REQULATIONS MAY BE DEVELOPED

Regulations may be desirable because of the minimum standards or controls they establish that can be enforced. Some potential disadvantages of regulations is that they may restrict desired flexibility or establish standards that cannot always be met. The overall approach being taken in the development of regulations for the new Child Welfare Act prior to July, 1985, is that of minimum regulations. This approach means that regulations considered to be essential for proper implementation of the legislation, and its intent, will be developed prior to proclamation. As an option to regulations for other matters, child welfare programs, policies and standards will be developed to provide the direction and guidance required. This approach has the advantage of enabling maximum flexibility at the time of implementing new directions established in the legislation, while leaving the option to develop regulations open for the future, if experience dictates that there is a need to do so.

While the legislation enables the Minister to develop regulations addressing three different aspects of secure treatment, it is assumed that prescribing institutions as secure treatment institutions is the most critical

matter requiring the development of regulations prior to proclamation of the new Child Welfare Act. The rationale for developing these regulations is, in part, dictated by the legislation which defines secure treatment institutions as those prescribed by the Minister. A second concern is the desire to ensure that this form of treatment of children under the Child Welfare Act is kept to a minimum.

While there are substantive issues that need to be addressed regarding both the standards of diagnostic and treatment services within secure treatment programs and the means applied to confine children, it is believed that it would not be desirable to regulate these matters at this time. Program policies and standards can be established and an expectation made for both the government and non-government service providers for adherence. Should experience dictate the need for stronger controls in these areas, regulations could be developed in the future.

BACKGROUND

Present Situation

Under the present Child Welfare Act, there are provisions for compulsory care which enables a judge or the Director of Child Welfare to confine a child in an institution for a specific time period. The children who may be the subjects of these placements are those in the care of the Director.

Compulsory care was initiated in 1977 at which time the Director unofficially designated 107 beds within child care institutions as compulsory care beds. This number was arbitrarily determined as the anticipated resources that would be required. After 1977, the demand for compulsory care treatment continued to increase, resulting in the number of beds designated for the purposes of compulsory care to be 152 in 1984. The experience has been that there has always been pressure to provide additional resources, however, as these resources were allocated, the demand continued to exist. Experience has also demonstrated that the more facilities that are provided, the greater the utilization.

The extensive demand for compulsory care placements appears to have been attributed to a number of factors, including:

(i) the ability for the Director of Child Welfare to utilize certificates to confine a child for an extended period of time (i.e. up to 180 days without a court review);

(ii) the inability of open treatment facilities to manage acting out or runaway children adequately;

(iii) the vague criteria for the application of compulsory care which has resulted in a broad interpretation of its utilization;

(iv) difficulties in the movement of children from compulsory care to other kinds of treatment resources;

(v) the court's desire to impose control on children when there has been a lack of confidence that other options would effectively restrict the activities of the child.

The issues of determining the number of beds allocated to compulsory care has been a matter of balancing the demand with the desire to minimize the application of this form of treatment. When there has been a shortage of resources, children have been placed inappropriately and resources have been taxed to provide services.

The need for compulsory care resources within the child welfare system has been eased with the transfer of the juvenile offenders program to the Solicitor General's Department. It is estimated that 50 to 65 percent of the youths in compulsory care were there as a result of a delinquency related court hearing.

THE NEW CHILD WELFARE ACT

Part 4 of the new legislation provides for the secure treatment of children. The provisions enabling a director to confine a child have been restricted by the requirements that confinement be limited to 5 days and that the director appear before the court not more than 5 days after confining the child to show cause for the confinement. The court has the authority to order secure treatment on its own initiative.

Options

The following options have been identified in response to the desire to control the application of secure treatment orders and certificate.

1. Do not develop any regulations prescribing institutions as secure treat ment institutions.

This option assumes that regulations on this matter are not required prior to proclamation of the new Child Welfare Act.

Advantages

(i) Maximum flexibility in the provision of secure treatment resources to meet the demand for these services.

(ii) Would result in minimum changes to the present services.

(iii) Avoids the necessity of changing the regulation, should any regulations developed not meet the demand for services.

Disadvantages

(i) May be perceived as an unwillingness to provide a strong commitment to reduce the utilization of secure treatment services.

(ii) May be perceived as sanction to continue to accept greater reliance on secure treatment services resulting in increasing resources being committed to this service.

(iii) May detract from the development of innovative treatment programs to serve children in less restricted community programs.

2. Develop regulations prescribing secure treatment institutions as any facility in part or in whole operated or funded by the Minister to pro vide secure treatment services.

This option provides a regulation that affords maximum flexibility in the designation of secure treatment resources.

Advantages

(i) Provides the directors with maximum flexibility in the designation of secure treatment resources.

(ii) Results in minimum disruption upon proclamation of the legislation.

(iii) Enables the designation of secure treatment in a number of communities thereby enabling children to remain close to their families.

Disadvantages

(i) May not effectively control the utilization of secure treatment services.

(ii) difficult to provide a specialized, effective and cost efficient treatment program by virtue of small isolated programs distributed across the province.

3. Designate one facility as a secure treatment institution for the province.

This option assumes that the requirement for this form of treatment for children under the care of the child welfare system can reasonably be provided by one facility after July 1, 1985.

Advantages

(i) Provides the potential to deliver a program that has the best professional staff and support services that are available in the province.

(ii) Minimizes the operating and maintenance costs.

(iii) Curtails the use of this form of treatment for children by providing minimum resources.

Disadvantages

(i) Would result in the placement of children far from their home community which is contrary to the principles of the new legislation.

(ii) potential to hinder the effectiveness of the diagnostic and treatment services due to the distance between the institution and the child's family, school, etc.

(iii) Depending upon the size of the facility, it may be very difficult to make an adjustment to such a radical reduction in services.

4. Develop regulations prescribing two facilities to serve the province.

This option would result in a facility being designated in Edmonton and Calgary as secure treatment institutions. This option has many of the advantages and disadvantages of option 3 above.

Advantages

(i) Establishes a restricted number of beds in the two largest populated centres in the province.

(ii) Enables the development of a strong program due to the availability of appropriate professionals staff and support services.

(iii) Maintains the majority of the children close to their homes.

Disadvantages

(i) Requires some children to be placed some distance from their home community.

(ii) Depending on the size of the facilities, there may be difficulties in adjusting to a significant reduction of resources.

5. Develop regulations prescribing one secure treatment institution for each region.

Advantages

(i) Would keep children within their region.

(ii) Would facilitate the development of programs in accordance with regional needs.

(iii) Would eliminate any issues that arise when one region has to depend upon another region for some services.

(iv) Might promote regional incentives to ensure that resources were utilized efficiently and effectively.

Disadvantages

(i) Potential difficulties in establishing and maintaining specialized programs in some regions due to the lack of professional personnel.

(ii) Maximizes the total costs for these services for the province by virtue of duplication.

(iii) Potential for a disparity of services between regions.

(iv) Local access may promote the utilization of the services rather than curtail the overall use of secure treatment in the province.

RECOMMENDATION

Option 4 is the preferred option. This option prescribes two institutions in the province to provide secure treatment services.

RATIONALE

The primary intent of this regulation is to curb the applications for secure treatment services under the new Child Welfare Act. While there is a desire to restrict the number of beds available for deployment, the services must be sufficient to meet the needs of those children who absolutely require this form of intervention. This option balances the desire to have services as close to the child's community with the desire to establish effective and efficient programs. An additional intent would be to promote the development of innovative treatment plans for individual children within their home communities by enabling child welfare workers to access funds that would be otherwise committed to residential treatment services.

OTHER MATTERS FOR WHICH REGULATIONS MAY BE DEVELOPED

Draft #1

December 21, 1984

Child Welfare Implementation Project

Alberta Social Services and Community Health

ISSUE

Section 96(1)(a) enables the Lieutenant Governor in Council to make regulations respecting procedures for the assessment and placement of children under the Child Welfare Act.

BACKGROUND

PRESENT SITUATION

Following the decision to remove a child in need of protection from his home, child welfare workers are required to make a sound major decision which is to assess the needs of the child and make a proper placement.

The assessment of a child's placement needs is the responsibility of the child Welfare worker, however, numerous resources may be utilized by the worker including:

i) Receiving facilities (institutions and foster homes);
ii) Youth Assessment Centres;
iii) Professional assessments, made by psychologists, psychiatrists and others;
iv) Consultation with supervisors, case consultants and others.

Placement decisions are most frequently made by child welfare workers in consultation with their immediate supervisors. Regional Child Welfare Placement Committees review all applications for residential treatment placements. (These committees are composed of departmental staff and members of the community). Chairmen of these committees have been delegated the authority to issue compulsory care treatment certificates, however, these placements are subject to review of the Courts and it is the Courts that make most of these placement orders.

REQUIREMENTS UNDER THE NEW LEGISLATION

The new legislation does not have any provisions that compel adherence to any regulations that may be developed on this matter. There are, however, some requirements of the legislation that will have an impact upon the assessment and placement of a child. These requirements include:

i) The requirement to consider the principle set forth under Section 2 of the Act, specifically Section 2 (h) which outlines five matters that must be taken into account when making any decision to place a child outside of his family.

ii) The setting out of the terms of a custody agreement must include a plan for the care of the child.

iii) The filing of a case plan with the court upon the making of a temporary guardianship order.

iv) The participation of foster parents in court hearings where they have provided 6 months or more of care to the child.

v) The power of appeal panels to review a decision made by a director to remove or place a child in a foster home, adoptive home, or any other place where children who are the subject of a temporary or permanent guardianship order or a permanent guardianship agreement may be maintained.

vi) Time limitations on agreements and orders will dictate the need for effective placement of children resulting in the child being returned to their families or the making of alternative permanent plans for their care.

OPTIONS

1. Do not develop regulations prior to proclamation of the legislation. This option assumes that regulations are not required for proper implementation of the legislation. Under this option the department would be required to develop policies, standards, and procedures to govern the activities of child welfare workers and others engaged in the activity of assessing and placing children.

Advantages

i) Retains maximum flexibility at a time of introducing new legislation.

ii) Reduces the amount of changes required by staff upon proclamation of the legislation.

iii) Allows an opportunity for experience under the new legislation to determine the need for regulations and nature of any regulations that may be developed.

Disadvantages

i) May be a public perception that regulations are expected on this matter upon proclamation of the Act.

ii) May be perception by staff that the issues surrounding the procedures for the assessment and placement of child are less critical than they would be if developed in regulations.

RECOMMENDATIONS

It is recommended that regulations not be developed on this matter prior to July, 1985.

RATIONALE

At the time of proclamation of the Act, the persons responsible for the assessment and placement of children will be the directors. The actions of the directors can be controlled through program policies and standards that would set provincial expectations. Given the variation of needs and services across the province a flexible service delivery system is required at a time of introducing major changes.

Regulations on this matter may be appropriate in the future, but are not considered essential at proclamation.

ISSUE

Section 96(1)(b) allows for regulations to be developed prescribing the standards to be met in providing protective services including the qualifications of persons to be employed in providing those services.

As the matter of the qualifications of persons to be employed in providing protective services is a separate issue, the issues to be addressed below are the standards to be met in providing protective services.

BACKGROUND

PRESENT SITUATION

Standards that have been developed for staff providing protective services to children under the present legislation are not regulated. Staff are, however, required to adhere to program standards that are provided within a program manual that contains policies, standards, and procedures. Compliance to the standards is monitored by staff supervising child welfare workers, regional monitoring processes and district office audits conducted by Management Audit.

REQUIREMENTS UNDER THE NEW LEGISLATION

There are no specific references within the legislation that refer to the regulations that might prescribe standards for protective services. There are, however, numerous new provisions within the legislation which will have a major impact on the nature of the protective services to be provided. These provisions include the case plan, detailed agreements, time limitations, the opportunity for the child and others to participate in decisions, and the capacity of appeal panels to review decisions made by directors.

OPTIONS

1. Do not develop regulation prior to proclamation of the legislation. This option assumes that proper implementation of the legislation could occur without regulations being provided. Program standards could continue to be provided to staff through Departmental

directives in the absence of regulations and expectations of non-government service providers could be identified through detailed contracts.

Advantages

i) Avoids the issue of having to anticipate what standards would need to be developed during a time when substantial change is occurring with the introduction of new legislation.
ii) Allows maximum flexibility for staff.
iii) Allows for experience under the new legislation.

Disadvantages

i) May be perceived as a failure to provide a strong commitment to minimum standards of service.
ii) May result in the failure of some providers to meet the standards desired by the Department, particularly when the provision of services has been delegated to persons outside of the Department.

RECOMMENDATIONS

It is recommended that regulations not be attempted prior to proclamation.

RATIONALE

The development of these regulations is considered to be a complex task and not critical as long as the provision of services is primarily through the Department. Regulated standards may be more critical when the responsibility for the provision of services is delegated to agencies external to the Department.

The need to ensure that contracted services provide a quality service may be accomplished through detailed contracts such as is the present arrangement in purchasing residential treatment services.

ISSUE

Section 96(1)(d) of the new Child Welfare Act enables regulations to be made prescribing the forms including notices to be used in any application made to the Court under this Act.

BACKGROUND

PRESENT SITUATION

Under the present Child Welfare Act these forms are not regulated.

REQUIREMENTS UNDER THE NEW LEGISLATION

The new legislation differs from the present circumstances in two major respects:

i) Persons other than the directors will be making applications to the Court for a variety of orders under the new legislation. For example, it is intended that all adoption applications will be made by the adoptive parents. These applications are presently made by the Director of Child Welfare.

ii) Throughout the legislation there is reference to numerous prescribed forms that are to be used when making applications to the Court.

OPTIONS

1. Do not develop regulation prescribing these forms prior to proclamation of the legislation.

   This option assumes that regulations are not required in order to implement the legislation. In the absence of regulated forms persons would not be restricted to certain forms when making court applications. Policies would be developed to ensure staff used standardized forms and these forms would be provided to the public for use as well.

Advantages

i) Avoids extensive regulations that would be required to accommodate all the forms.

ii) Relieves applicants of the requirement to secure the prescribed forms prior to initiating an application to the Court.

iii) Eliminates the necessity to amend the regulations when forms require amending.

Disadvantages

i) Results in a wide variation of information being presented to the Courts by virtue of the absence of a standardized form.

ii) May result in some confusion as to what forms should be used in making applications.

RECOMMENDATIONS

The preferred option is to not regulate these forms prior to proclamation of the legislation.

RATIONALE

This recommendation is based on the government direction towards minimum regulations. To regulate the court application forms and notices would result in over 35 forms being prescribed. In addition it is anticipated that some applications might be filed in a form other than the prescribed form and it would seem inappropriate to not have the matter proceed before the Courts merely because of the form of the application.

In the absence of regulations the department could still develop the forms and make them available to the public for their use.

ISSUE

Section 96(2)(a) enables the Minister to make regulations prescribing the forms to be used under this Act other than the forms prescribed for the purpose of Court applications, including notices.

BACKGROUND

PRESENT SITUATION

Under the present Act these forms are not regulated.

REQUIREMENTS UNDER THE NEW LEGISLATION

The new legislation refers, in numerous sections, to forms as those prescribed in the regulations. Examples of these forms include support agreements, custody agreements, permanent guardianship agreements and access and maintenance agreements.

OPTIONS

1. Do not develop regulations prescribing these forms prior to proclamation of the legislation.

   Advantages

   i) Avoids extensive regulations due to the number of forms involved.
   ii) Avoids the necessity of altering the regulations every time the forms are changed.

   Disadvantages

   i) May result in the use of non standardized forms and a variation in information being obtained for the records.

2. Develop regulations prior to proclamation of the legislation that prescribe the forms to be used under the Act, other than the Court forms. This option could result in prescribing all those forms referred to within the legislation as "prescribed forms". This would be the

minimum regulations as other forms may be identified for consideration such as application for the disclosure of identifying information under the voluntary disclosure provisions within the adoptions part of the Act.

Advantages

i) Standardizes all the forms used and provides for consistent collection of information.

ii) Avoids the necessity of altering the regulations every time the forms are changed.

Disadvantages

i) Results in extensive regulations and the need to change the regulations whenever a form is changed.

RECOMMENDATIONS

The preferred option is to avoid regulating these forms prior to proclamation.

RATIONALE

It is believed that it is not necessary to prescribe these forms in regulations. In the absence of regulations the department could develop appropriate forms and encourage the public to use them. Should there be difficulties encountered in the application of these forms regulations could be considered at this time.

The primary persons using these forms will be the employees of the department and program policies, standards and procedures could be developed to govern the forms to be used.

ISSUE

Section 96(2)(b) enables the Minister to make regulations prescribing the amount, nature, and condition of services and financial assistance provided under the Child Welfare Act.

Section 96(2)(d) enables the Minister to prescribe in regulations the rates payable by the Minister for the provision of any protective services under this Act.

Both matters are being addressed together in that it is believed that the issues are very similar and the rationale for an approach to either matter should be the same.

BACKGROUND

PRESENT SITUATION

The present Child Welfare Act does not have any regulations prescribing these matters. There is a section (Section 100) which outlines those costs incurred under the Act which the Minister is required to pay.

Within the Child Welfare Program manual, there is information for the staff which provides schedules of fees payable for purchased services, and conditions to be met in purchasing these services. Foster care maintenance is included in this information and all foster parents are provided a copy, as well as additional information on how to access services and meet their costs. Fee schedules are adjusted annually to accommodate any changes as a result of the Department's negotiations with service providers (e.g. Dental Fees), while foster care rates are reviewed annually and are tied to the consumer price index.

REQUIREMENTS UNDER THE NEW LEGISLATION

The legislation contains one specific reference to these matters as a potential regulation. Section 72(2)(b) provides that agreements for the purposes of assisting a handicapped child, or his family, must contain terms indicating the nature and amount of the services for the financial assistance to be provided in accordance with the regulations.

OPTIONS

1. Do not develop regulations prior to proclamation of the legislation. This option assumes that regulations are not required for implementation of the legislation even though one section specifically states that the regulations are to determine the nature and amount of services to be provided through Handicapped Children's Services.

   Advantages

   i) Provides maximum flexibility that may be essential given regional variations in costs of services.

   ii) Eliminates the requirement to change the regulations whenever the rates change.

   iii) Avoids the issue of attempting to develop a regulation for a very complex matter. (e.g. it would be very difficult to develop regulations listing all the services provided within child welfare while a general regulation may be meaningless.)

   Disadvantages

   i) Does not provide a public declaration of the amount, nature, and conditions of services and financial assistance to be made available under the Act nor the rates payable for protection services.

   ii) May be particularly of concern to the recipients of Handicapped Children's Services in that there would be no regulations.

2. Develop regulations on this matter prior to proclamation of the legislation.

   Advantages

   i) Provides clear direction as to the amount, nature and conditions of services and financial assistance to be provided and the rates to be paid for protective services.

   ii) Complies with the intent within section 72(b) which indicates that Handicapped Services are to be those provided in the regulations.

Disadvantages

i) It would be difficult to develop a regulation prior to July, 1985 because of the complexity of the matter.

ii) Depending on the nature of the regulation, the desired flexibility may be lost which enables the services to be provided in accordance with the needs of the family and/or child (e.g. the range of services for handicapped children.)

iii) Regulations would have to be changed whenever the rates were changed.

RECOMMENDATIONS

It is preferred that no regulation be developed on these matters prior to proclamation.

RATIONALE

At a time of introducing the new legislation, it is believed that a period of time should be allowed to pass during which experience is gained under the Act. This experience should dictate the need for regulations. It is also felt that this matter can be controlled through other means, such as program policies and standards. While there is a need to provide direction to control the commitments made under the Act for services, there is also a need for maximum flexibility for the child welfare worker in order to enable the worker to respond most effectively to the individual situations.

ISSUE

Section 96(2)(c) enables the Minister to prescribe in regulations the protective services that are support services.

BACKGROUND

PRESENT SITUATION

There are no regulations on this matter under the existing child welfare legislation.

Support services at present are very broad as the intent is to enable the Department to provide an appropriate and immediate response to the needs of a family or child. Family Support Services include such services as homemakers, family counselling, individual assessments and assistance for transportation. These services are provided to enable a child to remain with his family when in the absence of the services, there may be a need to remove the child. They have also been applied in those situations where support for a family will result in an ability to return a child to his family. There is no requirement for a formal agreement with the child or the family regarding the provision of support services. Program policies standards and guidelines currently provide structure to these services. Decentralization has resulted in considerable reduction in the funds spent in child welfare.

REQUIREMENTS UNDER THE NEW LEGISLATION

Section 7 of the new legislation enables a director to enter into a support agreement with a guardian of a child or with a child who is 16 years of age or over. The purpose of these agreements is to provide support services when the director is of the opinion that the child is in need of protection and as a result of the services to the family or the child, the child's survival, security or development will be adequately protected.

The section of the Act providing definitions (Section 1(z)) states that "support services" are protective services prescribed as support services in the regulations. Protective services are defined as any services provided to a child under this Act except those provided under Section 72 (Services for Handicapped Children).

In keeping with the intent of this Act, it is envisioned that extensive use of Support Agreements will occur as it is one of the least intrusive forms of intervention that may occur when a child is in need of protection.

OPTIONS

1. Do not develop regulation prior to proclamation of the legislation. This option assumes that the legislation could be effectively implemented without regulations.

   Advantages

   i) Maintains the current flexibility available within the program.
   ii) Avoids the issue of determining what should be developed as the regulations prior to proclamation of the legislation.

   Disadvantages

   i) May be perceived as avoiding the intent of the legislation since support services are to be defined by the regulations.
   ii) May result in some difficulties in controlling expenditures in the absence of regulations, however, decentralizing of the budgets to district offices and the taking of formal agreements may offset this.

2. Develop regulations prior to proclamation of the legislation.

   Advantages

   i) Provides clarity as to the limitations of support services.
   ii) May contribute to a cost savings if the support services were to be reduced in nature from the present practice.

   Disadvantages

   i) Depending upon the nature of the regulation, the desired flexibility of the program may be lost.
   ii) Would require extensive efforts to be completed prior to proclamation.
   iii) Could result in the making of undesirable regulations since they would be delevoped prior to any experience under the new legislation.

RECOMMENDATIONS

Do not provide regulations prior to proclamation.

RATIONALE

It is believed that it is not crucial to have regulations controlling this matter prior to implementation of the new legislation. It is felt that the strategy should be to apply program policies in the absence of regulations. The need for regulation should be determined by experience with legislation.

ISSUE

Section 96(2)(e) enables the Minister to develop regulations prescribing the period for which a person may be provided with care and maintenance under Section 33(2). (This section provides for services to a child in permanent care of a director beyond the child's 18th birthday.)

BACKGROUND

PRESENT SITUATION

At present Child Welfare Act enables the Director of Child Welfare to assist children who have been in the care of the director and the term of their temporary or permanent wardship order has been completed. Either the child or the guardian may request that the child remain a ward of the Crown for the purposes of completing a course of studies or other training. The Director is limited to extending the period of care to 10 months. Requests granted by the Director have the effect of the child remaining a ward for the period authorized. All of these provisions are contained within Section 26(4) and (5).

REQUIREMENTS UNDER THE NEW LEGISLATION

Section 33(2) states that when a child is the subject of a permanent guardianship order and attains the age of 18 years, the Minister may continue to provide him with care and maintenance for a further period prescribed in the regulations so that he can complete a course of studies or other training. This section contemplates that regulations will provide the direction required. Although the Minister is named in the Act as the person to make the decision to extend the period of care and maintenance, it is anticipated that in practice, this responsibility would be delegated to others (e.g. the directors).

OPTIONS

1. Do not develop regulations prior to proclamation of the legislation. This option assumes that regulations are not required by July, 1985, and in the absence of regulations, the Minister could continue to serve these children beyond the age 18 for any period of time agreed upon.

   Advantages

   i) Provides the maximum flexibility.

   ii) The development of regulations implies that this matter is a major issue that requires this level of control.

   Disadvantages

   i) May result in some uncertainty as to the position of the Department on this matter.

   ii) May be interpreted that in the absence of regulations, the Minister is unable to provide services to any youths beyond their 18th birthday.

2. Develop regulations prior to proclamation of the legislation.

   Advantages

   i) Provides clear policy direction.

   ii) Would be consistent with the intent of the Act since section 33(2) refers to the regulations.

   Disadvantages

   i) Depending upon the regulations developed, the Minister may not be able to fully assist an individual child because of the limitations prescribed.

RECOMMENDATIONS

No regulations required by July 1, 1985.

RATIONALE

The reason for not putting forth regulations on this matter is that it is deemed to be an area where regulations are not essential. The frequency of requests for these services are minimal under the present legislation and are anticipated to be less under the new legislation due to the emphasis on early permanency planning for children in care. Policies could be developed to determine when service would be extended and the duration of the extension.

ISSUE

Section 96(2)(g) enables the Minister to make regulations prescribing the standards of diagnostic and treatment services to be provided in a secure treatment institution.

BACKGROUND

PRESENT SITUATION

The present compulsory care services under the existing legisaltion places the responsibility on the Director of Child Welfare for ensuring that every child confined in an institution is provided with diagnostic and treatment services. These services are to meet the needs of the child but may be limited by the capabilities of the staff of the institution and the services they are able to provide (Section 85).

At present there are no regulations, policies, standards or guidelines specifically in place which define what constitutes diagnostic and treatment services and what specifically is required in the delivery of these services.

Compulsory care services are provided by both government owned and operated institutions and private operations contracted by the Department.

Since being introduced in 1977, the demand for compulsory care treatment has increased, although the transfer of the Young Offenders Program to the Solicitor General's Department in 1984 has significantly reduced the number of compulsory care orders and certificates.

REQUIREMENTS UNDER THE NEW LEGISLATION

Part 4 of the new Child Welfare Act on Secure Treatment places the responsibility on the person in charge of the secure treatment institution for ensuring that the child admitted under a secure treatment certificate or order is provided with the diagnostic and treatment services appropriate to the needs of the child. These services are to be provided in accordance with the standards prescribed in the regulations (Section 43(2)(a)).

It is the intent of this legislation that diagnostic and treatment services must be provided to a child in contrast to the present legislation which allows the services to be determined by the qualifications of the staff.

OPTIONS

1. Do not provide regulation prior to proclamation of the new legislation. This option assumes that regulations are not essential for proper implementation of the legislation.

   Advantages

   i) The development of these complex regulations cannot be adequately completed in the time afforded.

   ii) Provides flexibility and allows for adjustments to be made during implementation of the legislation.

   Disadvantages

   i) May be perceived as not providing direction on a matter which the legislation identifies as a matter to be regulated.

   ii) May result in confusion as to the expectations of secure treatment service provides.

2. Develop regulations prior to proclamation of the legislation.

   Advantages

   i) Provides clear direction and expectation.

   ii) Would appear to meet the intent of the legislation since it specifies that the secure treatment services are provided in accordance with the regulations.

   Disadvantages

   i) May impose hardship on the service providers if they were not providing services consistent with the regulations developed.

   ii) May restrict the development of innovative services such as those that may be provided through a wilderness camp.

RECOMMENDATIONS

It is recommended that no regulations be developed prior to proclamation.

RATIONALE

Part of the rationale for this position is the anticipation that there will be regulations prescribing those institutions to be secure treatment institutions which will limit the resources allocated to this service. This should result in the development of highly specialized resources and the provision of intensive diagnostic and treatment services.

In addition these regulations would require extensive efforts to develop and the impact of the new legislation should be assessed prior to determining what regulations may be required.

Finally, a Children's Mental Health system is being planned. The development of diagnostic and treatment services are part of the mandate of the planning committee. Consideration of regulations should await the outcome of this planning process.

ISSUE

Section 96(2)(h) enables the Minister to develop regulations prescribing the level of security required for the confinement of a child in a secure treatment institution.

BACKGROUND

PRESENT SITUATION

At present the Director of Child Welfare is required to ensure that every child confined to a compulsory care institution is provided with a level of security that is reasonably required for the confinement of the child (Section 85).

Compulsory care beds are designated throughout the province within a variety of settings including Youth Assessment Centres, intensive treatment centres such as William Roper Hull Home, and rural programs such as Stampede Boys Ranch.

There are no regulations, policies, standards, or guidelines regarding the levels of security required for a child confined to compulsory care for diagnosis and treatment.

REQUIREMENTS UNDER THE NEW LEGISLATION

It is a requirement under Section 43 of the new legislation that the person in charge of the secure treatment institution responsible for admitting the child to provide a level of security that is appropriate for the confinement of the child in accordance with the regulations.

OPTIONS

1. Do not provide regulations on this matter prior to proclamation of the legislation.

   This option assumes regulations are not essential for the proper implementation of the legislation.

Advantages

i) Provides maximum flexibility in developing programs confining children in secure treatment programs.

ii) Allows for the development of secure measures to be in accordance to the individual needs of the child.

Disadvantages

i) Enables service providers to engage in practices that may be inappropriate.

ii) May result in a disparity of services varying from an over emphasis on security to an under emphasis.

2. Develop regulations prior to proclamation of the legislation.

Advantages

i) Provides clear standards for the persons in charge of the secure treatment institution.

ii) Would be reviewed positively by those who are concerned that present services fail to adequately detain the children placed within some facilities.

Disadvantages

i) Depending on the nature of the regulations, some service providers may have difficulty in meeting the requirement of the regulations.

ii) May result in some service providers being opposed to the regulations because they may be viewed as contrary to their program philosophy.

iii) May result in an over concern for ensuring children are provided with security at the cost of individualized treatment approaches.

RECOMMENDATIONS

Do not develop regulations prior to proclamation of the legislation.

RATIONALE

This recommendation is made with the assumption being that those institutions providing secure treatment will be prescribed in the regulations. The institutions involved will have locked secure facilities appropriate for compulsory care. These initiatives are expected to result in the development of limited and specialized resources.

It is also believed that it is not critical to prescribe the levels of security in regulations and that program design and policies should accomplish the desired outcome.

ISSUE

Section 96(2)(i) enables the Minister to develop regulations that define "handicapped child" for the purposes of this Act.

BACKGROUND

PRESENT SITUATION

The provision of services for handicapped children through the Child Welfare Act was facilitated through a slight amendment to the Act which enabled the Director of Child Welfare to enter into agreements with parents for the purposes of assisting a child because of the special needs of the child.

At present, there is a definition of a handicapped child in policy which is very broad. A handicapped child is a child who has been assessed by a recognized medical or related health professional as having a chronic physical disability or disorder, and/or mental deficiency/disorder of organic cause. A child who is chronically handicapped as a result of a traumatic injury is also eligible for services under the program. Over the years, the eligibility criteria for the program has been interpreted broadly in response to the wide range of requirements that occur to meet the needs of children with special needs.

REQUIREMENTS UNDER THE NEW LEGISLATION

The major change that will occur under the new legislation is that services for a handicapped child will no longer be considered as protective services. This approach recognizes that some parents require assistance due to the unique needs of their child rather than because they have neglected their responsibilities.

A director may enter into an agreement with the guardian of a child with respect to the provision of services to the family or the child if, in the opinion of the director, the child is a handicapped child.

The agreements must include terms prescribing whether the child will be placed in the care or custody or under the control or supervision of a director in order to permit the provision of services or financial assistance

to the family or the child. Other terms are to indicate the nature and amount of the services or the financial assistance to be provided and the contributions (financial or otherwise) that are to be made by the guardian of the child.

There is no reference within the legislation to a regulation defining a handicapped child.

OPTIONS

1. Do not develop regulations prior to proclamation of the legislation.

   Advantages

   i) Provides maximum flexibility within the program.
   ii) Results in minimum disruption to this program upon implementation of the legislation.

   Disadvantages

   i) May result in confusion of the limitations of the program unless policies are clearly provided and made widely known.

2. Develop regulations prior to proclamation of the legislation.

   Advantages

   i) Provides clear parameters for the program.
   ii) Insures public participation in defining the parameters of the program by virtue of public consultation on the definition to be developed as a regulation.

   Disadvantages

   i) May be untimely given that the Department is endeavoring to review and reshape the Handicapped Children's Services.

RECOMMENDATIONS

Do not develop regulations prior to proclamation.

RATIONALE

It is believed that this is not the time to develop regulations given that work is still being done on a review of this program. While the present definition is broad the staff have been able to control the expenditures within the program to curtail the annual over expenditures that were occurring in past years.

ISSUE

Section 96(2)(j) enables the Minister to make regulations respecting the amount, nature, conditions and reviews of any financial assistance granted under Section 68 (i.e. assistance to adoptive parents).

BACKGROUND

PRESENT SITUATION

The present Child Welfare Act does not provide for any financial assistance to be provided to adoptive parents following the granting of the adoption order.

REQUIREMENTS UNDER THE NEW LEGISLATION

The new Child Welfare Act enables the Minister to provide financial assistance in accordance with the regulations to any person who adopts a child. Assistance may be provided when the child was the subject of a permanent guardianship agreement or order prior to the adoption. The Minister must be satisfied that the adoption of the child is desirable but would place an undue burden on the financial resources of the adopting parents (Section 68(1)).

Section 68 also states that the Minister may review the financial assistance from time to time and may vary or terminate the financial assistance in accordance with the regulations.

OPTIONS

1. Do not develop regulations prior to proclamation of the legislation. This option assumes that regulations are not required for proper implementation of the legislation. In the absence of regulations the Department could develop policies on this matter.

Advantages

i) Provides for flexibility in determining the services to be provided.

Disadvantages

i) The public may be concerned that the benefits and conditions of the financial assistance to be made available to adoptive parents have not been publicly declared in the form of a regulation.

ii) May be an interpretation that there was an intent to provide regulations prior to proclamation of the legislation.

2. Develop regulations prior to proclamation of the legislation.

Advantages

i) May assist in ensuring that the intent of restricting the granting of financial assistance is kept to a minimum.

Disadvantages

i) Would not allow for experience in this area to determine what the regulations might provide.

RECOMMENDATIONS

The preferred option is not to develop regulations prior to proclamation of the legislation.

RATIONALE

It is believed that policies could be developed to provide the necessary direction for the implementation of the intent of the legislation governing the matter of providing financial assistance to adoptive parents. Should regulations become necessary, they could be developed in the future. As there are a number of substantive and complex issues relating to subsidized adoption, it is desirable to retain flexibility at the onset in order to provide some practical experience in administering this section of the Act.

ISSUE

Section 96(2)(k) enables the Minister to prescribe in regulations a schedule of fees that will be paid by the Minister to lawyers appointed under Section 78. (Section 78 provides the client with the authority to appoint a lawyer to represent a child at a hearing.)

BACKGROUND

PRESENT SITUATION

The present Child Welfare Act enables the Director of Child Welfare to retain counsel to represent the interests of a child at a hearing respecting the child. On these occasions, the child welfare worker authorizes payment to the lawyer according to the schedule of fees established by the Law Society of Alberta.

REQUIREMENTS UNDER THE NEW LEGISLATION

Under Section 78 of the new Child Welfare Act, the Court may direct that a lawyer represent a child if the child, the child's guardian, or a director requests the Court to do so or the Court is satisfied that the interests or views of the child would not be adequately represented. When the Court directs that a lawyer be provided for the child, the Court is required to refer the child to the Legal Aid Society of Alberta or refer the matter to the Attorney General if there is no legal aid assistance available. If a referral is made to the Attorney General, it is the responsibility of the Attorney General to appoint or cause a lawyer to be appointed to represent the child. The Court has the additional authority to make an order directing that the costs of a lawyer secured through the Attorney General be paid by the child, the guardian of the child or the Minister or apportioned among all or any of them. There is no requirement that the costs of a lawyer be determined by a schedule of fees prescribed in regulations.

OPTIONS

1. Do not develop regulation prior to proclamation of the legislation.

Advantages

i) Avoids having to change the regulations when the schedule is changed.

2. Develop regulations prior to proclamation of the legislation.

Advantages

i) Provides clear direction on the fees the Minister would pay lawyers.

Disadvantages

i) May be perceived as discriminatory in that the schedule of fees for other services (eg. psychological assessments) may not be regulated.

RECOMMENDATIONS

It is recommended that it is not necessary to develop a regulation for these fees prior to proclamation.

RATIONALE

It is believed that a schedule of fees could be developed as a policy which could provide the direction required at the time the new legislation is implemented and that the issues of a schedule of fees for lawyers is not substantive enough to warrant regulations at this time. In addition, this regulation would have to be changed each time the fee schedule of the Law Society was changed. This would be administratively inefficient given the option of using policy to adjust fee payable to lawyers.

ISSUE

Section 96(2)(l) enables the Minister to prescribe matters that may be the subject of an appeal to an Appeal Panel.

BACKGROUND

PRESENT SITUATION

A Child Welfare Commission exists under the present legislation that has been appointed by the Lieutenant Governor in Council. All members are employed by the Department and one member is always the Director of Child Welfare. Only one Commission is permitted and it may be composed of 3 to 5 members. Section 93 sets out the criteria for the establishment of the Commission and lists its duties.

Section 2 provides for appeals to the Commission. Any person affected by a decision of the Director of Child Welfare, a child welfare worker or an employee of the Department on any matter under the Act may appeal to the Commission. Upon review of the decision, the Commission may conform, reverse, or vary the decision.

Any person affected by a decision of the Commission may appeal to the Minister for a review and the Minister may confirm, vary or reverse the decision of the Commission.

REQUIREMENTS UNDER THE NEW LEGISLATION

Section 84 through 86 in the new Child Welfare Act addresses the matter of Appeal Panels.

The Minister may establish 1 or more Appeal Panels consisting of 3 to 7 members appointed by the Minister. An Appeal Panel, subject to the Act and the regulations, may confirm, reverse or vary the decision of a director. The decision of an Appeal Panel is final.

Appeals may be made by any child, guardian of the child, or foster parent (or other persons) who has had continuous care of the child for more than 6 months when they have been affected by a decision of a director.

The Act specifies 6 decisions of a director that may be appealed. They are:

(1) The renewal from a placement in a foster home, an adoptive home or any other place of a child who is the subject of a temporary or permanent guardianship order or a permanent guardianship agreement.

(2) The permitting or refusing to permit any person who has a significant relationship with the child to visit a child who is the subject of a permanent guardianship agreement.

(3) The disclosure of or refusal to disclose information in the possession of the Minister that relates to the appellant except information to which Section 66 applies.

(4) The provision of or refusal to provide any support services to a child 16 years of age or over by entering into a support agreement or custody agreement.

(5) The refusal or failure of a director to enter into an agreement under Part 2 or to apply to the Court under Part 3 in respect to a child who, in the opinion of that director, is in need of protective services.

(6) The refusal or failure of a director to enter into an agreement under Section 72 in respect of a handicapped child.

A seventh provision in the Act refers to any other matter prescribed in the regulations as being subject to an appeal.

Decisions made by the Children's Guardian or the Minister are not appealable to an Appeal Panel.

OPTIONS

1. Do not develop regulation prior to proclamation.

This option assumes that the provisions of the legislation presently enable appeal of sufficient decisions made by a director.

Advantages

i) Allows for experience under the new provision for Appeal Panels to identify the need for regulations.

Disadvantages

i) There may be items that some people feel should be appealable and therefore included in regulations.

2. Develop regulations prior to proclamation of the legislation.

Advantages

i) May result in the identification of items that people feel should be subject to appeal being included within regulations.

Disadvantages

i) May result in unnecessary or inappropriate regulations as they would be developed in anticipation of issues that may not develop following implementation of the legislation.

RECOMMENDATIONS

Do not develop regulations prior to proclamation.

RATIONALE

It is believed that in preparing the new legislation that a great deal of thought went into identifying the items that should be appealable to an Appeal Panel. The intent of the provision enabling regulations on this matter was to allow for additional matters to be included in the future if the legislation had omitted any matters or circumstances eventually dictate the need for changes.

ISSUE

Section 96(2)(m) enables the Minister to make regulations prescribing those persons who may represent an appellant at a hearing before an Appeal Panel.

BACKGROUND

PRESENT SITUATION

The present Child Welfare Act provides no direction on who may appear before the Child Welfare Commission. In practice hearings have tended to be informal and the appellants have represented themselves.

REQUIREMENTS UNDER THE NEW LEGISLATION

The new legislation provides direction on the proceedings of the appeals and who may represent the appellant. Section 85 states that the Administrative Procedures Act applies to the proceeding and the appellant may be represented at the hearing of the appeal by a lawyer or by any other person prescribed by the regulations.

The persons who may make an appeal are any child, guardian of the child, or foster parent or other person who has had the continuous care of the child for more than 6 months.

OPTIONS

1. Do not provide regulation prior to proclamation of the legislation. This option assumes regulations are not required in order to properly implement the new legislation. In the absence of regulations it is interpreted that anyone could represent an appellant at an appeal hearing.

   Advantages

   i) Provides maximum flexibility for appellants in selecting a representative.

Disadvantages

i) There may be an expectation that the legislation intended regulations to be provided on this matter.

ii) May cause some confusion for Appeal Panels in determining how to proceed given the variety of representatives appellants may choose.

2. Develop regulations prior to proclamation of the legislation.

Advantages

i) Provides Appeal Panels and appellants with direction and clarification.

ii) May be perceived as meeting the intent of the legislation since section 85 refers to the regulations.

Disadvantages

i) Any regulation restricting the selection of representatives by appellants may be seen as unnecessary interference by potential appellants.

ii) May be difficult to develop prior to any experience with the new appeal provisions in the legislation.

RECOMMENDATIONS

The preferred option is to not develop regulations on this matter prior to proclamation.

RATIONALE

The primary reason for this recommendation is that it is believed that maximum freedom should be provided to appellants in their selection of any representation they may require. As children may make appeals it would seem that the child may wish to have a person they know and trust represent them. This person may be anyone. In addition, experience with new appeal provisions would be valuable prior to the development of any regulations on this matter.

ISSUE

Section 96(2)(n) enables the Minister to make regulations prescribing those persons required to keep records under this Act.

BACKGROUND

PRESENT SITUATION

There are few provisions in the present Child Welfare Act that address the management of records established during the administration of child welfare services. Section 41 requires that persons in charge of institutions keep case histories and records of a child when required by the Director of Child Welfare. The Director, or his representatives, may examine all the records kept by an institution.

REQUIREMENTS UNDER THE NEW LEGISLATION

Section 92 of the new Act defines a record as a document, record, report, return, memorandum or other information whether in writing or in electronic form or represented or reproduced by any other means. Records also include the results of illustrations of data processing systems and programs. The legislation requires that a person required to do so by the regulations keep records on children who are the subjects of investigations, agreements, or orders under the new Act or its predecessor.

There are provisions directing where the records are to be kept and requiring them to be retained for a period of 100 years. The Minister may order, or consent, to the destruction of records. Records may be inspected by the Minister at any time. Finally, there is an offense for contravention of any of the requirements pertaining to the management of records.

OPTIONS

1. Do not develop regulation prior to proclamation of the legislation. This option assumes that regulations on this matter are not required at proclamation of the legislation.

Advantages

i) As the number of persons required to keep records under the Act will be limited at the time of proclamation, regulations may be unnecessary.

ii) May reduce anxiety about compliance with the regulation.

Disadvantages

i) May be perceived as not fulfilling an intent of the legislation as Section 92(2) refers to a regulation for direction.

ii) May result in confusion as to who is required to keep records under the Act.

RECOMMENDATIONS

It is recommended that regulations are not required at the time of implementing the legislation.

RATIONALE

The persons required to keep records will be those who are responsible for children who are the subjects of an investigation, agreement, or order under this Act or any preceding Act. In practice this will be the child welfare delivery system as it stands. Under the new legislation records will be required for the purposes of meeting the needs of both the Children's Guardian and the directors.

It is envisioned that at a time of enabling non-Departmental agencies to provide these services regulations may be more appropriate, although the requirements for establishing and maintaining records could be met through other means (eg. agreements, contacts).

In addition, the department is still in the process of determining what is the most appropriate record keeping system for a decentralized child welfare system. It is likely that significant changes will occur in the next 2-3 years, particularly with enhancements to the Child Welfare Information System. It would be difficult to develop an appropriate regulation at this moment. Consideration could be given to a regulation when the new system is in place.

ISSUE

Section 96(2)(o) enables the Minister to make regulations prescribing any other matter to be prescribed under this Act.

This is a general provision that may be utilized in the future. There are not regulations contemplated at this time that would be developed under this section.